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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/785,905	02/16/2001	Hartwig Schlesiger	Mo-6021/WW-5562	3662

34947 7590 04/03/2003

BAYER CHEMICALS CORPORATION  
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PITTSBURGH, PA 15205

EXAMINER
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JONES, DWAYNE C

ART UNIT	PAPER NUMBER
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1614

DATE MAILED: 04/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/785,905

Applicant(s)

SCHLESIGER ET AL.

Examiner

Dwayne C Jones

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 28 January 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All   b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Status of Claims***

1. Claims 1-8 are pending.
2. Claims 1-8 are rejected.

### ***Response to Arguments***

3. Applicants' arguments filed January 28, 2003 have been fully considered but they are not persuasive. Applicants make the following arguments. Applicants allege that Bujara et al. is insufficient to support a prima facie case of obviousness in that it lacks the basis for employing a gas stream comprising steam as a superheated gas. More specifically, applicants purport that Bujara et al. disclose of a transporting gas for conveying its cellulose compounds, whereas the instant invention contacts the feed composition with a superheated gas mixture. Applicants' alleges improved properties with respect to the bulk density and viscosity of products, the energy of the system when compared to Bujara et al.

4. In response to applicants' allegation that Bujara et al. only disclose of a transporting gas for conveying its cellulose compounds, whereas the instant invention contacts the feed composition with a superheated gas mixture, the following is noted. In applicants' specification it states that the gas mixture is between 0° to 300°C, (see page 12, lines 14-21). Bujara et al. disclose that the temperature of the gas stream is generally from 20° to 250°C, (see from page 10, line 35 to page 11, line 2). Applicants'

attempt to distinguish their invention from that of Bujara et al. with the phrase of contacting in an impact mill a superheated gas with the feed composition. However, the prior art reference of Bujara et al. also preferably teach of conveying the cellulose feed material with a gas while in the impact mill, (see page 10, lines 23-35). In order for the cellulose feed material of Bujara et al. to be conveyed by a gas it must obviously be in contact with said feed material. For these reasons, the prior art reference of Bujara et al. render the instant invention obvious because applicants' claim limitations are taught and suggested by the Bujara et al.

5. Applicants' alleges improved properties with respect to the bulk density and viscosity of products, the energy of the system when compared to Bujara et al. In the absence of compelling data, these allegations are found unpersuasive given the fact that the process of Bujara et al. is ever so closely related and similar to the instantly claimed invention.

### ***Claim Rejections - 35 USC § 103***

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. The rejection of claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bujara et al. of GB 2,262,527 is maintained and repeated for both the above-stated and reasons of record. Bujara et al. teach of a process of making water-soluble cellulose derivatives of particulate size, (see Example 1). Bujara et al. teach of the gellation of a cellulose derivative, wherein the water content is between 30 to 80

wt.%, (see page 5, lines 31-34). Bujara et al. also disclose of using various types of mills, in particular an impact mill is used for the cellulose compounds, (see page 10). The instant claims differ over the prior art by reciting specific ranges of the degree of substitution of the ether derivatives of cellulose. Bujara et al. do provide disclosure that the methylcellulose generally has a methoxyl substitution of from 10 to 40 %, (see page 6). Clearly, one having ordinary skill in the art could utilize the teaching of Bujara et al. to optimize ranges, such as with the degree of substitution, through routine experimentation, see *In re Aller*, 220 F.2d 454, 456, 105 USPQ 23, 235 (CCPA 1955). In addition, the normal desire of scientists or artisans to improve upon what is already generally known provides the motivation to determine where in a disclosed set of percentage ranges is the optimum combination of percentages", see *In re Peterson*, U.S. Court of Appeal for the Fed. Cir., 02-1129, (2003).

### ***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicants are reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

9. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. C. Jones whose telephone number is (703) 308-4634. The examiner can normally be reached on Mondays through Fridays from 8:30 am to 6:00 pm. The examiner can also be reached on alternate Mondays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marianne Seidel can be reached on (703) 308-4725. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

  
D. C. JONES  
PRIMARY EXAMINER

Tech. Ctr. 1614  
April 2, 2003